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ACB

Appellant: ERNEST W. MOODY

Serial No.: 10/645,358

Art Unit: 3714

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Examiner: Epshteyn, A.

For: VIDEO POKER GAMES WITH EXTRA HANDS ON NEXT ROUND FOR CERTAIN
STARTING HANDS

MAIL STOP APPEAL BRIEF -- PATENTS

Commissioner for Patents

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ALEXANDRIA, VA 22313-1450

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Ernest W. Moody

Appellant

Signature

April 18, 2007

Date of Signature

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1. REAL PARTY IN INTEREST

This application has not been assigned or licensed, but it is under contract to be assigned to Action Gaming, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

3. STATUS OF CLAIMS

Claims 1-7 are pending in this application. Claims 1-7 stand FINALLY rejected.

4. STATUS OF AMENDMENTS

There are no Amendments after the Final rejection of Claims 1-7.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant's invention relates to a method of playing a card game. In the method of Appellant's invention, an initial draw poker hand is displayed to the player. If the initial draw poker hand comprises a predetermined arrangement of cards, the player is

awarded an additional round of play having at least two hands of cards.

Claim 1 is the independent method claim. The method starts with the player making a first wager to play a draw poker game. [Specification -- Page 15:lines 19-20]. An initial draw poker hand is displayed to the player [15:19 - 16:1].

If the initial poker hand comprises a predetermined arrangement of cards, the player is awarded an additional round of play of a poker game with at least two hands of cards [16:2-4].

The player plays out the initial draw poker hand in accordance with a conventional manner of play of draw poker resulting in a final draw poker hand [16:15-17:4]. The poker hand ranking of the final draw poker hand is determined and the player is awarded an amount for a winning draw poker hand based on the poker hand ranking according to a draw poker pay table [17:4-6].

Dependent Claim 2 specifies that the player makes an additional wager to play the next round of play. [17:8-10].

Dependent Claim 3 specifies that the initial hand and each hand on any additional rounds of play has five cards. [Figs. 1 and 2].

Dependent Claim 4 specifies that each hand on any additional rounds of play has the same cards by suit and rank. [Fig 2]. Dependent Claim 5 specifies that during the additional round of play, the same cards are held in each hand. [17:17-20]. Dependent Claim 6 specifies that during the additional round of play, different cards may be held in each hand. [18:2-5; 7:14-15].

Dependent Claim 7 specifies that if the player receives a predetermined arrangement of cards during the additional round of play, the player is awarded a second additional round of play of a poker game with at least two hands. [19:18-20:4].

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-7 stand rejected under 35 U.S.C. 103 as being unpatentable over Slomiany.

7. ARGUMENTS

Rejection of Claims 1-7 based on Slomiany.

Claims 1-7 stand rejected under 35 U.S.C. 103 as being unpatentable over Slomiany.

Slomiany discloses a draw poker game in which the player moves through various levels of a draw poker game as long as the player has a winning outcome on the previous level of the draw poker game. The player makes a wager that covers the number of levels that the player wishes to play. If the player wishes to play only a one level game, the player wagers the amount required for one level. If the player wishes to play a two, three or four level game, the player makes the wager amount required for such level.

After the player has made his wager, a first hand of draw poker is played as the first level of the game. If the player has a winning final hand combination at the first level, the player advances to the second level. The player continues to advance through all the levels for which the player has wagered as long as the player achieves a winning hand combination on each level. If, at any level, the player achieves a losing hand combination, the game ends even if the player has wagered for more levels than the player has achieved.

For example, the player makes the wager amount to play up to four levels. The player achieves a winning hand combination on the first level and therefore advances to the second level. The player achieves a losing hand combination on the second level which ends the game. The player collects any payout for the winning first level hand combination and forfeits the wager he made that is

allocated to the third level and fourth level of the game.

There is also a disclosure in Slomiany (col. 26, lines 32-38) that the player may get a FREE RIDE from one level to the next level, but this FREE RIDE is offered on a random basis and is not related to any particular card arrangement achieved during a level of play. The FREE RIDE is required to increase the overall game return to a percentage that is high enough to be acceptable to the gaming consuming public.

In contrast to the Slomiany disclosure, Claim 1 requires that the player receives a second round of play of a poker game having at least two hands if the player receives a predetermined arrangement of cards on the initial deal of the first round of the poker game. This is substantially different than the method disclosed by Slomiany.

Slomiany requires that the player having a winning outcome at the end of the first level of play; and, if such winning outcome occurs, then the player is eligible to go to the next level of play. As noted, the disclosure in Slomiany also provides for a FREE RIDE to the next level of play regardless of the outcome of the first level of play. Both of these manners of proceeding to the next level of play in Slomiany are different from the manner of proceeding to the next round of play as set out in Claim 1.

Claim 1 specifies that the player must be initially dealt a

predetermined arrangement of cards to be awarded the second round of play. It is the initial deal of the cards to the player that determines whether the player is awarded the next round of play. In the method of the present invention, the player may or may not achieve a winning hand combination on the first round -- such is irrelevant to the player being eligible to go to the next round.

Claim 1 also specifies that the additional round of play that is awarded to the player is a poker game having at least two hands of cards.

Slomiany only discloses that each subsequent level of play be a single hand of play. There is no teaching or suggestion in Slomiany that the second level of play must be at least two hands of cards. The Examiner merely concludes that the second level of play could be multiple hands, but there is no factual basis relied on by the Examiner for this conclusion.

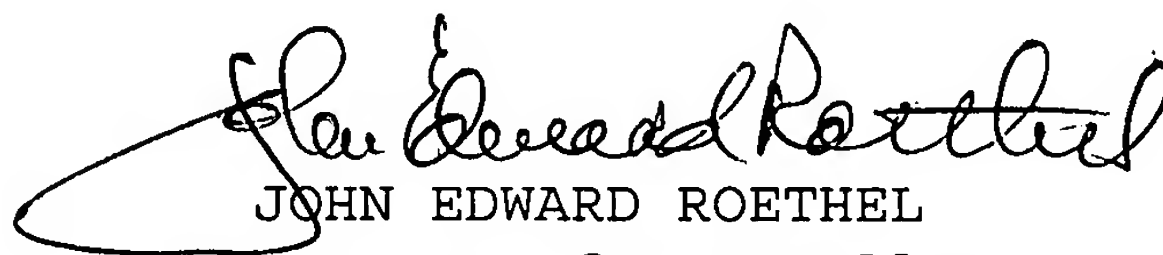
Claims 2-7 depend, directly or indirectly, from Claim 1 and are submitted to be allowable for the same reasons that Claim 1 is allowable.

8. CONCLUSION

Appellant submits that Claims 1-7 have been improperly rejected by the Examiner under 35 U.S.C. 103. Appellant re-

spectfully requests that the Board of Appeals reverse the Examiner's rejections of Claims 1-7 and remand this application to the Examiner for further action consisting of a Notice of Allowance.

Respectfully submitted,

A handwritten signature in black ink, reading "John Edward Roethel". The signature is written in a cursive style with a large, looping initial "J".

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CLAIMS APPENDIX

Claim 1. A method of playing a card game comprising:

- a) a player makes a first wager to play a draw poker game;
- b) displaying an initial draw poker hand to the player;
- c) if the initial poker hand comprises a predetermined arrangement of cards, awarding the player an additional round of play of a poker game with at least two hands of cards;
- d) the player playing out the initial draw poker hand in accordance with a conventional manner of play of draw poker resulting in a final draw poker hand; and
- e) determining a poker hand ranking of the final draw poker hand and awarding the player an amount for a winning draw poker hand based on the poker hand ranking according to a draw poker pay table.

Claim 2. The method of Claim 1 in which the player makes an additional wager to play the next round of play.

Claim 3. The method of Claim 1 in which the initial draw poker

hand has five cards and each hand in the additional round of play has five cards.

Claim 4. The method of Claim 1 in which the additional round of play is a draw poker game and each hand has identical cards by suit and rank.

Claim 5. The method of Claim 4 in which, during the additional round of play, the same cards are held in each hand.

Claim 6. The method of Claim 4 in which, during the additional round of play, different cards may be held in each hand.

Claim 7. The method of Claim 1 further comprising if the player receives a predetermined arrangement of cards in an initial starting hand of the additional round of play, awarding the player a second additional round of play of a poker game with at least two hands.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None